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ALFREDO MAGANA GARIBAY

UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALFREDO MAGANA GARIBAY,

Defendant

Case No. 4:15-CR-6049-EFS-18

REPLY TO RESPONSE BY UNITED
STATES TO MOTION TO REOPEN
DETENTION HEARING

Note: July 31, 2018 at 2:30 pm
Before Magistrate Judge Dimke at Richland

COMES NOW the defendant, ALFREDO MAGANA GARIBAY, by and through his attorneys, CARNEY & MARCHI, and replies to the Government's Response to the Motion to Reopen Detention Hearing. Mr. Magana-Garibay maintains that the only issue before this Court is what relevance the weapon has at this time given the prior conditions of release. The remaining issues raised by the government are moot as the government did not seek an appeal of the initial Detention Order in June 2017.

On June 23, 2017, this Court denied the Government's request for detention and granted conditions of release. See ECF 457. Mr. Magana-Garibay has now complied with the conditions, absent posting the required bond. He has quashed the warrant for the pending matter in Sunnyside. See ECF 834, Exhibit A. He has further provided information that the weapon is

1 no longer in the storage unit nor in the possession of the residence which has been verified for
2 release. ECF 834, Exhibit B. The family is prepared to post the bond either through their own
3 financial resources or through a bonding company.

4 The Government now raises the issue of an ICE detainer that they request should be
5 addressed by this Court. The defendant maintains that the Court should release Mr. Magana-
6 Garibay even if there is an ICE detainer. See *United States v. Santos-Flores*, 749 F.3d 1088 (9th
7 Cir. 2015)

8 The Government cites to a recent decision out of this district that warrants detention
9 based on an ICE detainer, *United States v. Rodriguez-Morales*, 2:18-CR-0085-TOR. The
10 problem with the Order of Detention in *United States v. Rodriguez-Morales* is the court seemed
11 to focus on the fact that a defendant could seek an expeditious removal thus thwarting
12 persecution. It should be noted that ICE can initiate Removal Proceedings or not initiate
13 proceedings. They can also detain or not detain an individual. The Enforcement and Removal
14 Office (ERO) has the authority to release an individual under conditions on their own accord.
15 They can also commence removal proceedings by issuing a Notice to Appear (NTA) and filing it
16 with the Immigration Court. They also do not have to issue an NTA.

17 In the case at bar, Mr. Magana-Garibay did have employment authorization through
18 DACA. It appears to have been revoked by ICE once these charges were filed. He does appear
19 to have relief from removal as he has not been convicted of the current charges. The Order in
20 *Rodriguez-Morales* seems to imply that there was the risk of immediate removal should ICE take
21 custody of that defendant. Further the court seemed to rely on the fact that removal was
22 mandatory. Here that is not the case, Mr. Magana Garibay does appear to have relief in removal
23 and would be eligible for bond by ICE as he does not have a felony conviction. Additionally, he
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1 would be eligible to request bond be set by an Immigration Judge if removal proceedings were
2 initiated. Mr. Magana-Garibay maintains that as this Court addressed ICE in its Order in 2017,
3 the issue need not be raised now.

4 **B. Conclusion.**

5 It appears that Mr. Magana-Garibay has complied with the conditions or will once he
6 posts the bond, this Court should authorize release.

7 DATED this 27th day of July 2018.
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10 Respectfully Submitted,

11 *S/ Nicholas Marchi*
12 Nicholas Marchi, WSBA 19982
13 CARNEY & MARCHI
14 Attorneys for Defendant
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CERTIFICATE OF SERVICE

I certify that a copy of this Reply was e-mailed via ECF on 7/27/2018, to S. Van Marter,
Assistant United States Attorney, 402 E. Yakima, Suite 210, Yakima, WA 98901.

S/ Nicholas Marchi
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